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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 91.

FRED H. KOLZE, ADMINISTRATOR OF THE ESTATE OF FRIEDERICH KOLZE, DECEASED; LINA KOLZE, LOUISA KOLZE, ET AL., APPELLANTS,

vs.

CHARLOTTE E. HOADLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED SEPTEMBER 2, 1904.

(19,463.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 8, 1905.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

CHARLOTTE E. HOADLEY, Complainant, *vs.* ABRAHAM L. DAY, CHARLES E. STADE, as Trustee; Frank Stade, as Successor in Trust; Louisa Kolze, a Spinster; Fred H. Kolze, as Administrator of the Estate of Friedrich Kolze, Deceased; Percy V. Castle, as Trustee, and Arista B. Williams, as Successor in Trust, and Lina Kolze, a Widow, Defendants.	In Chancery. 25192.

Mr. Herman W. Stillman, solicitor for Charlotte E. Hoadley.
Mr. Percy V. Castle, Mr. Arista B. Williams, Mr. Ben M. Smith, solicitors for Fred H. Kolze, adm'r, etc., Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor in trust.

2 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, in chancery sitting at the United States court room, in the city of Chicago, in said district and division, before the Honorable Christian C. Kohlsaat, district judge of the United States for said northern district of Illinois, on Wednesday, the twenty-fifth day of May, in the year of our Lord, one thousand nine hundred and four, being one of the days of the regular December term of said court, 1903, and of our Independence the one hundred and twenty-eighth year.

MARSHALL E. SAMPSELL, Clerk.

3 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

CHARLOTTE E. HOADLEY, Complainant, *vs.* ABRAHAM L. DAY, CHARLES E. STADE, as Trustee; Frank Stade, as Successor in Trust; Louisa Kolze, a Spinster; Fred H. Kolze, as Administrator of the Estate of Friedrich Kolze, Deceased; Percy V. Castle, as Trustee, and Arista B. Williams, as Successor in Trust, and Lina Kolze, a Widow, Defendants.	In Chancery. 25192.

Be it remembered that on this day to-wit: the twentieth day of November, 1903, came Charlotte E. Hoadley, the complainant in

the above entitled cause by her solicitors Messrs. Stillman and Martyn and Mr. Edwin M. Ashcraft as counsel and by leave of court first had and obtained filed in the clerk's office of said court her certain amended bill of complaint in words and figures following to-wit:

4 Amended Bill.

UNITED STATES OF AMERICA, Northern District of Illinois, } ss:

In the United States Circuit Court, Northern District, Northern Division.

CHARLOTTE E. HOADLEY, Complainant,
vs.
ABRAHAM L. DAY, CHARLES E. STADE, as Trustee; FRANK STADE, as Successor in Trust; Louisa Kolze, a Spinster; Fred H. Kolze, as Administrator of the Estate of Friedrich Kolze, Deceased; Percy V. Castle, as Trustee, and Arista B. Williams, as Successor in Trust, and Lina Kolze, a Widow, Defendants.

To the honorable the judges of said court, in chancery sitting:

And now comes Charlotte E. Hoadley, the complainant in the above entitled cause, by Stillman & Martyn, her solicitors, and by Edwin M. Ashcraft of counsel for said complainant and files this her amended bill in said cause, by leave of court first had and obtained, in words and figures following to-wit:

Your oratrix, Charlotte E. Hoadley, a citizen of the city of Boston, in the State of Massachusetts, brings this her bill of complaint against Abraham L. Day, Charles E. Stade, as trustee, Frank Stade, as successor in trust, Fred H. Kolze, administrator of the estate of
4½ Friedrich Kolze, deceased, Lina Kolze, widow of Friedrich Kolze, deceased, Louisa Kolze, a spinster, Percy V. Castle, as trustee and Arista B. Williams, as successor in trust, all of whom are citizens of the county of Cook, in the State of Illinois,

Humbly complaining, your oratrix respectfully represents unto your honors, that on, to-wit: the 15th day of November, A. D. 1897, one Friedrich Kolze, a resident of said county of Cook, and State of Illinois, was the owner of all of the premises hereinafter described, and other property situated in the said county of Cook and State of Illinois, and that while he was such owner, on, to-wit: the date aforesaid, the said Friedrich Kolze and Lina Kolze, his wife, sold and conveyed the said premises hereinafter described, and other property, to the defendant Abraham L. Day, at a stated consideration of forty five thousand dollars ($45,000.) by general warranty deed, dated and acknowledged on, to-wit: said 15th day of November A. D. 1897 and recorded in the recorder's office of Cook county on the 23rd day of

November, A. D. 1897, in Book 6185 of Records on page 584; your oratrix further shows that as part consideration for said conveyance the said Friedrich Kolze was to receive the sum of one thousand dollars of which sum your oratrix shows that the sum of seven hundred and sixty dollars was in fact paid to and was retained by the said Friedrich Kolze; and your oratrix shows that to secure payment of the deferred portions of the consideration for said premises, notes and trust deeds were executed by the said Abraham L. Day, which trust deeds conveyed various parts of the premises so sold and conveyed for the part of the deferred purchase money chargeable against such various parts thereof, respectively; and your oratrix shows that to secure payment of the sum of fifty-four hun-
5 dred dollars ($5400), being part of the purchase money for the premises hereinafter described, said premises being part of the premises described in the said warranty deed above referred to, the said Abraham L. Day made, executed and delivered, his nine principal promissory notes, dated November 17th, A. D. 1897, payable to the order of himself and by him duly endorsed, for the principal sum of six hundred dollars ($600.) each, three of said notes being due and payable in one year, three of said notes being due and payable in two years and three of said notes being due and payable in three years, from the date thereof respectively, with interest thereon at six per cent. per annum, payable annually before maturity, and to bear interest at the rate of seven per cent. per annum, after maturity, said notes being numbered 16, 17, 18, 19, 20, 21, 31, 32 and 33, respectively, as by said notes ready to be produced upon the hearing thereof, and by copies thereof hereto attached, marked Exhibits "A" "B," "C," "D," "E," "F," "G," "H" and "I," respectively, will more fully appear.

Your oratrix further represents that to secure the payment of the principal sums and interest thereon, evidenced by said three notes numbered 31, 32 and 33, respectively, and disbursements as herein after stated, the said Abraham L. Day, a bachelor, made, executed and delivered a certain deed of trust of even date with said promissory notes, and thereby conveyed to the defendant, Charles E. Stade, as trustee, the following described real estate, situated in the county of Cook and State of Illinois, to-wit:

6 Lots twenty-five (25) to forty-eight (48) both inclusive, in block seven (7) in B. L. Lee's addition to Fairview, said addition being a subdivision of the south half (½) of the northeast quarter (¼) of the south west quarter (¼) and the south east quarter (¼) of the south west quarter (¼) of section nine (9) township forty (40) north, range twelve (12) east of the third principal meridian, map whereof is recorded in the recorder's office of said Cook county, as Document 1,656,444, in Book 53 of Plats, page 36, subject, however, to a condition of defeasance upon the payment of the principal sum and interest secured thereby as aforesaid, and all expenses under said trust deed, according to the provisions thereof; which said deed of trust was duly acknowledged and afterwards, to-wit: on the 24th

day of November, A. D. 1897, was recorded in the recorder's office of Cook county, aforesaid, in Book 5367 of Records, at page 98, as by said instrument, and its accompanying certificates of acknowledgment and recording, ready to be produced upon the hearing of this cause, and by a copy thereof hereto attached, marked Exhibit "J," and made a part hereof, will more fully appear.

Your oratrix further represents that to secure the payment of the principal sums and interest thereon evidenced by said promissory notes numbered 19, 20 and 21, respectively and disbursements as hereinafter stated, the said Abraham L. Day, made, executed and delivered a certain other deed of trust, of even date with said promissory notes, and thereby conveyed to the defendant, Charles E. Stade, as trustee, the following described real estate, situated in the county of Cook and State of Illinois, to-wit: Lots twenty-five (25) to forty-eight (48) both inclusive, in block five (5) in B. L. Lee's
7 addition to Fairview, said addition being a subdivision of the south half ($\frac{1}{2}$) of the north east quarter ($\frac{1}{4}$) of the south west quarter ($\frac{1}{4}$) and the south east quarter ($\frac{1}{4}$) of the south west quarter ($\frac{1}{4}$) of section 9, township forty (40) north, range twelve (12) east of the third principal meridian, map whereof is recorded in the recorder's office of said Cook county, as Document 1,656,444, in Book 53 of Plats, page 36, subject, however, to a condition of defeasance upon the payment of the principal sums and interest secured thereby, as aforesaid, and all expenses under said trust deed, according to the provisions thereof, which said deed of trust was duly acknowledged, and afterwards, to-wit: on the 24th day of November, A. D. 1897, was recorded in the recorder's office of Cook county, aforesaid, in Book 5367 of Records, at page 94, as by said instrument and its accompanying certificates of acknowledgment and recording, ready to be produced upon the hearing of this cause and by a copy thereof hereto attached, marked Exhibit "K" and made a part hereof, will more fully appear.

Your oratrix further represents that to secure the payment of the principal sums and interest thereon evidenced by said promissory notes numbered 16, 17 and 18, respectively, and disbursements as hereinafter stated, the said Abraham L. Day, a bachelor, made, executed and delivered his certain other deed of trust of even date with said principal promissory notes, and thereby conveyed to the defendant, Charles E. Stade, as trustee, the following described real estate, situated in the county of Cook and State of Illinois, to-wit:

8 Lots one (1) to twenty four (24) both inclusive, in block five (5) in B. L. Lee's addition to Fairview, said addition being a subdivision of the south half ($\frac{1}{2}$) of the north east quarter ($\frac{1}{4}$) of the south west quarter ($\frac{1}{4}$) and south east quarter ($\frac{1}{4}$) of the south west quarter ($\frac{1}{4}$) of section nine (9) township forty (40), north, range twelve (12) east of the third principal meridian, map whereof is recorded in the recorder's office of said Cook county, as document 1,656,444 in Book 53 of Plats, at page 36, subject, however, to a con-

dition of defeasance, upon the payment of the principal sums and interest secured thereby, evidenced by said three notes, numbered 16, 17 and 18, respectively, as aforesaid, and all expenses under said trust deed according to the provisions thereof, which said trust deed was duly acknowledged and afterwards, to-wit: on the 24th day of November A. D. 1897, and afterwards recorded in the recorder's office of Cook county aforesaid, in Book 5367 of Records, at page 93, as by said instrument and its accompanying receipts of acknowledgment and recording, ready to be produced upon the hearing of this cause, and by a copy thereof hereto attached marked Exhibit "L" and made a part hereof, will more fully appear.

Your oratrix further represents and shows that it is provided in and by each of said trust deeds hereinbefore referred to, and described, that if default be made in the payment of the said several promissory notes, secured by said trust deed respectively, or of any part thereof, or the interest thereon, or any part thereof, at the time and in the manner therein specified for the payment thereof, or in case of waste, or non payment of taxes or assessments on said
9 premises, or of a breach of any of the covenants or agreements therein contained, then in such case, the whole of said principal sum and interest, secured by the said several promissory notes under each trust deed respectively, shall thereupon, at the option of the legal holder or holders thereof, become immediately due and payable; and on the application of the legal holder of said promissory notes, or either of them, secured by said trust deeds respectively, it should be lawful for the said grantee in said respective trust deeds, or his successor in trust, to enter into and upon and take possession of the premises, granted by said trust deed as to which default should be made as aforesaid, or any part thereof, then to collect and receive all rents, issues and profits thereof, and in his own name or otherwise, to file a bill or bills in any court having jurisdiction thereof, against the said party of the first part, his heirs, executors, administrators and assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises, so respectively conveyed for the purpose therein specified by said party of the second part, as such trustee, or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, all costs of advertisement, sale and conveyance, including the reasonable fees and commissions of said party of the second part, or person, who may be appointed to execute said trust, and one hundred dollars ($100.00) attorneys' and solicitors' fees, and also all other expenses of said trust, including all moneys advanced for insurance, taxes and other liens or assessments, with interest thereon at six per cent. per annum, then to pay the principal of said promissory notes, secured by any
10 either or all of said trust deeds so foreclosed, whether due and payable by the terms thereof or at the option of the legal holder thereof, and interest due on said notes, up to the time of such sale, rendering the overplus, if any, unto the said party of the first

part, his legal representatives or assigns on reasonable request, and to pay any rents that may be collected, after such sale and before the time of redemption expires of the purchaser or purchasers of said premises at such sale, or sales, and it shall not be the duty of the purchaser to see to the application of the purchase money.

Your oratrix further represents that the said sale and conveyance by the said Friedrich Kolze and wife, to the said Abraham L. Day, hereinbefore referred to, was negotiated by the defendant Charles E. Stade, who is a nephew, or otherwise related to the said Friedrich Kolze, and your oratrix shows that the said Friedrich Kolze at the date of said sale, and for a long time subsequently thereto, to-wit: until October, A. D. 1898, had great confidence in the said Charles E. Stade, and trusted him implicitly in and about the transaction aforesaid, and hereinafter set forth.

Your oratrix further represents and shows unto your honor that after the recording of said warranty deed from the said Friedrich Kolze and Lina Kolze, his wife, to the said Abraham L. Day, and the execution of said nine promissory notes and said three trust deeds hereinbefore described, the said Friedrich Kolze was then the owner of said nine promissory notes and three trust deeds, together with other notes and trust deeds, securing the same, executed for part of the purchase money of other parts of the premises so
11 conveyed to the said Abraham L. Day, as aforesaid, and being such owner the said Friedrich Kolze entrusted said nine promissory notes, now held and owned by your oratrix, executed by the said Abraham L. Day, and by him endorsed in blank, and being therefore negotiable by delivery, together with said trust deeds, now owned by your oratrix, to the said Charles E. Stade, his trusted agent in the premises, for safe keeping; and your oratrix shows that while the same were in the custody and keeping of the said Charles E. Stade, as the agent of the said Friedrich Kolze, but with all the indicia of ownership of the said securities, your oratrix, on or about the 17th day of February, A. D. 1898, advanced or secured to be advanced a large sum of money upon the note of the said Charles E. Stade secured to be paid by the pledge of the said nine principal notes and three trust deeds as collateral security therefor, and the said nine promissory notes and three trust deeds were then and there deposited by the said Charles E. Stade as such collateral security, and were relied upon by your oratrix as security for the sum of money advanced or secured to be advanced by your oratrix, as aforesaid; and your oratrix shows that the note of the said Charles E. Stade, to secure which the said nine promissory notes and three trust deeds were deposited, as aforesaid, was not paid in whole or in part, and said nine promissory notes and three trust deeds were thereafter sold, in accordance with the terms of the said collateral note, and were bid in and became and now are the property of your oratrix, and your oratrix is now the legal owner and holder thereof.

Your oratrix further represents and shows unto your honors that

after making of said three trust deeds, on to-wit: the 23rd
12 day of November, A. D. 1897, by deed dated and acknowledged on said date and delivered on to-wit: the 30th day of June, A. D. 1898, and recorded in the recorder's office of Cook county, Illinois, on said 30th day of June, A. D. 1898, the said Abraham L. Day, a bachelor, reconveyed the premises embraced in said three deeds, together with other property, to the defendant Friedrich Kolze, from whom the said Abraham L. Day derived title to *said premises, as aforesaid*; and your oratrix further shows that thereafter by a release deed, dated and acknowledged on, to-wit: on the 27th day of October, A. D. 1898, and recorded on, to-wit: October 29th, A. D. 1898, in Cook county, aforesaid, as document 2,747,678, in Book 6363 of records, at page 364, the said Charles E. Stade, trustee, did fraudulently and wrongfully release the three trust deeds hereinbefore described, together with other trust deeds covering other property, unto the said Friedrich Kolze, the said release deed, reciting that the same was made for and in consideration of one dollar, and for other good and valuable considerations, the receipt whereof is thereby confessed, and your oratrix shows in this behalf, that the indebtedness described in said three trust deeds and evidenced by the said nine notes, so owned by your oratrix, as aforesaid, had not and has not been paid, in whole or any part, and said notes had not, and have not, been canceled, and the said release deed, so executed by the said Charles E. Stade, trustee was and is fraudulent, and was made without payment or cancellation of said notes, or any of them, or the cancellation of said three trust deeds, and should be decreed to be void and of no effect, as against your
oratrix, as the owner and holder of said notes, secured by
13 said three trust deeds as aforesaid, and of said three trust deeds, and the said release deed should be set aside, and the said three trust deeds declared to be valid liens upon the said premises, by them conveyed respectively, according to the terms and tenor thereof; and your oratrix shows that the said fraudulent release deed released of record all of said three trust deeds aggregating fifty four hundred dollars ($5400) as aforesaid; and that unless said release deed shall be set aside, the amount of said securities will be lost to your oratrix.

Your oratrix further represents that at or about the time of the execution of and delivery of the said release deed, by the said Charles E. Stade, trustee, dated on, to-wit the 29th day of October, A. D. 1898, the said Friedrich Kolze, now deceased, and the defendant Lina Kolze, his wife, made, executed and delivered, their certain warranty deed of the said premises, conveyed in said three trust deeds aforesaid, and other property, to the defendant Louisa Kolze, who is a daughter of the said grantors, at an expressed consideration of twelve thousand dollars ($12,000) but your oratrix shows that the said Louisa Kolze, was not a *bona fide* purchaser of said premises, but that said conveyance was made to her to hold for the benefit of the family, and she is charg-able with notice of the facts hereinbe-

fore recited, that the notes secured by said trust deeds were not paid, and that the said three trust deeds were not cancelled, and the said Louisa Kolze took whatever interest she acquired in and to said premises by such conveyance, in all respects subject and subsequent to the lien of said three trust deeds for the securing of the said nine notes respectively, held and owned by your oratrix, as aforesaid, and her rights and interest in said premises should be so declared to be subject to the rights of your oratrix by the decree of this honorable court.

14 Your oratrix further represents and shows unto your *owners* that for the ostensible purpose of securing ten thousand dollars ($10,000.) of the purchase money of the said premises upon the said conveyance to the said Louisa Kolze, the said Louisa Kolze, made, executed and delivered to the said Friedrich Kolze, her principal promissory note for the sum of ten thousand dollars ($10,000) and secured the same to be paid by her certain trust deed in and by which trust deed the said Louisa Kolze conveyed to the defendant Percy V. Castle, as trustee, the defendant Arista B. Williams, being therein named as successor in trust, the said premises embraced in said three trust deeds, so owned by your oratrix and other property, which trust deed bears date the 27th day of October, A. D. 1898, and was acknowledged on to-wit: October 28th, A. D. 1898, and recorded in the recorder's office of Cook county on, to-wit: October 29th, 1898, in Book 5374 of Records, at page 94, and your oratrix shows that the defendant Fred H. Kolze, as administrator of the estate of Friedrich Kolze, deceased, is now the owner and holdof said note and trust deed last above mentioned, but that his interest as such owner and holder if any interest in fact exists, is in all respects subject and subsequent to the rights of your oratrix as the owner of said nine promissory notes and three trust deeds hereinbefore described and owned by your oratrix as aforesaid, and should be so declared to be by the order and decree of this honorable court.

Your oratrix further shows that under the option granted her in and by said three trust deeds she has heretofore, on, to-wit:
15 the date of the commencement of this suit, declared the said notes to be due and payable, and your oratrix shows that there is now due and unpaid to your oratrix the full amount of said notes, together with interest thereon from the date thereof according to the terms of said notes.

Your oratrix further shows that there is further due to your oratrix, the sum of three hundred dollars ($300.) being one hundred dollars ($100.) under each of said three trust deeds, as and for her solicitors' fees incurred in this proceeding.

Forasmuch, therefore, as your oratrix is without remedy in the premises save in a court of equity and to the end that the said Abraham L. Day, a bachelor, Charles E. Stade, as trustee, Frank Stade, as successor in trust, Louisa Kolze, a spinster, Lina Kolze, widow of Fr-edrich Kolze, deceased, Fred H. Kolze, as administrator of the

estate of Friedrich Kolze, aforesaid, Percy V. Castle, as trustee, and Arista B. Williams, as successor in trust, who are made parties defendant to this bill, may be required to make full, true and direct answer to the same, but not under oath, the answer under oath being hereby waived; that the said release deed so executed by the said Charles E. Stade, trustee, to the said Friedrich Kolze may be decreed to be fraudulent and void and of no effect whatsoever, as against the said nine notes and said three trust deeds so executed by the said Abraham L. Day, and now owned by your oratrix as hereinbefore set forth, and that said release deed may be set aside and held for naught by this honorable court; that the rights of all the defendants herein may be declared to be in all respects subject and subsequent to the rights of your oratrix under
16 said nine notes and three trust deeds, so held and owned by her, as aforesaid; that a receiver may be appointed by this honorable court with the usual powers of receivers in chancery, to take immediate possession of and to lease and collect the rents from said premises described in said trust deeds, during the pendency of this suit, and during the statutory time of redemption from any sales that may be made by order of this honorable court, according to the provisions of said trust deed; and your oratrix prays that an accounting may be had and taken in this behalf by and under the direction of the court; and that any and all of the defendants found liable thereof may be decreed to pay whatsoever sum or sums shall appear to be due to your oratrix upon said three several set of notes, secured by said three trust deeds respectively, at the time of the taking of said account, as well also as for the necessary disbursements made under and by virtue of the provisions of said trust deed, for the preservation of the lien thereof upon said premises, together with the costs of this proceeding, including the sum of one hundred dollars ($100) under each of said trust deeds, as and for her solicitors' fees as authorized by said deeds of trust, by a short day to be fixed by the court; that in default of payment of the amounts decreed to be due to your oratrix under either of said three trust deeds, then that the premises embraced in any, either or all of said trust deeds as to which default shall be made, may be sold as my be directed by the court, to specify the amount so found due, under any, either, or all of said three trust deeds as to which default in payment shall be made, together with costs as aforesaid; that in case of a sale of the premises embraced in any, either, or all of said trust deeds under said decree for a less amount then the sum so
17 found due, under said trust deed or trust deeds as to which a sale or sales shall be made respectively, then that execution may issue forthwith for the collection of such deficiency, against any of the said defendants who may be found liable therefor, pursuant to the statute in such case made and provided, and that in case of the sale of said premises, or any part thereof, and a failure to redeem therefrom, pursuant to statute, the defendants and all persons claiming by, through or under them, subsequent to the

commencement of this suit, may be forever barred and foreclosed of all right and equity of redemption in said premises so sold, and that such other and further relief may be granted in the premises as equity may require and to your honors shall seem meet.

May it please your honors to enter a rule upon all the defendants in this cause, to-wit: Abraham L. Day, Charles E. Stade, as trustee, Frank Stade, as successor in trust, Louisa Kolze, a spinster, Lina Kolze, widow of Friedrich Kolze, deceased, Fred H. Kolze, as administrator of the estate of Friedrich Kolze, deceased, Percy V. Castle, as trustee, and Arista B. Williams, as successor in trust, to answer this amended bill by a short day to be fixed by the court.

And your oratrix will ever pray, etc.

CHARLOTTE E. HOADLEY,
By STILLMAN & MARTYN,
Her Solicitors.

STILLMAN & MARTYN,
Compl't's Sol'r.
EDWIN M. ASHCRAFT,
Of Counsel.

18 EXHIBIT "A."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

One year after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee of even date herewith on real estate in Cook Co., Illinois, and is to bear interest at the rate of seven per cent. per annum after maturity.

(Signed) ABRAHAM L. DAY.

No. 16.

(Endorsement:) Abraham L. Day.

EXHIBIT "B."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

Two years after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee of even date herewith, on real estate in Cook Co., Ills., and is to bear interest at the rate of seven per cent. per annum after maturity.

(Signed) ABRAHAM L. DAY.

No. 17.

(Endorsement:) Abraham L. Day.

19 EXHIBIT "C."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

Three years after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee, of even date herewith, on real estate in Cook Co., Ills., and is to bear interest at the rate of seven per cent. per annum, after maturity.

(Signed) ABRAHAM L. DAY.

No. 18.

(Endorsement:) Abraham L. Day.

20 EXHIBIT "D."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

One year after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee of even date herewith on real estate in Cook Co., Illinois, and is to bear interest at the rate of seven per cent. per annum after maturity.

(Signed) ABRAHAM L. DAY.

No. 19.

(Endorsement:) Abraham L. Day.

EXHIBIT "E."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

Two years after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee of even date herewith, on real estate in Cook Co., Ills., and is to bear interest at the rate of seven per cent. per annum after maturity.

(Signed) ABRAHAM L. DAY.

No. 20.

(Endorsement:) Abraham L. Day.

21

EXHIBIT "F."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

Three years after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee, of even date herewith, on real estate in Cook Co. Ills., and is to bear interest at the rate of seven per cent. per annum, after maturity.

(Signed) ABRAHAM L. DAY.

No. 21.

(Endorsement:) Abraham L. Day.

22

EXHIBIT "G."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

One year after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee of even date herewith on real estate in Cook Co., Illinois, and is to bear interest at the rate of seven per cent. per annum after maturity.

(Signed) ABRAHAM L. DAY.

No. 31.

(Endorsement:) Abraham L. Day.

EXHIBIT "H."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

Two years after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee of even date herewith, on real estate in Cook Co., Ills., and is to bear interest at the rate of seven per cent. per annum after maturity.

(Signed) ABRAHAM L. DAY.

No. 32.

(Endorsement:) Abraham L. Day.

23 EXHIBIT "I."

Trust Deed Note.

$600 00/100. CHICAGO, November 17th, 1897.

Three years after date for value received I promise to pay to the order of myself the sum of six hundred dollars, at the Northern Trust Company bank, Chicago, Illinois, with interest thereon at the rate of six per cent. per annum, payable annually.

This note is secured by a trust deed to Charles E. Stade, trustee, of even date herewith, on real estate in Cook Co. Ills., and is to bear interest at the rate of seven per cent. per annum, after maturity.

(Signed) ABRAHAM L. DAY.

No. 33.

(Endorsement:) Abraham L. Day.

24 EXHIBIT "J."

Trust Deed—Statutory, under Law of 1879.

No. 790.

This indenture witnesseth, that the grantor, Abraham L. Day, bachelor of the city of Chicago, in the county of Cook and State of Illinois, for and in consideration for the sum of eighteen hundred (1800) dollars, in hand paid, conveys and warrants to Charles E. Stade, of the city of Chicago, county of Cook and State of Illinois the following described real estate, to wit: Lots twenty-five (25) to forty-eight (48) both inclusive in block seven (7) in B. L. Lee's addition to Fairview, said addition being a subdivision of the south half of the north east quarter of the south west quarter and the south east quarter of the south west quarter of section nine (9) township forty (40) north, range twelve (12) east of the third principal meridian, map whereof is recorded in the recorder's office of said Cook county as Doc. No. 1,656,444 in Book 53 of Plats page 36. Said premises being situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois, and all right to retain possession of said premises after any default in payment or a breach of any of the covenants or agreements herein contained in trust, nevertheless, for the following purposes:

Whereas, the said Abraham L. Day grantor herein is justly indebted upon his three (3) promissory note- bearing even date herewith, payable to the order of himself (and by him duly endorsed and delivered) for the principal sum of six hundred dollars ($600) each, due and payable in 2 and 3 years respectively from the date thereof, with interest thereon at 6 % per annum, payable annually, until due, principal and interest are payable at the Northern Trust Company bank, Chicago, Illinois, and are to bear interest at the rate of 7 % per annum after due, said notes being numbered 31, 32 and 33 respectively.

Now, if default be made in the payment of the said several promissory notes, or of any part thereof, or the interest thereon, or any part thereof, at the time and in the manner above specified for the payment thereof, or in case of waste, or non-payment of taxes or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then in such case the whole of said principal sum and interest, secured by the said several promissory notes, shall thereupon, at the option of the legal holder, or holders thereof, become immediately due and payable; and, on the application of the legal holder of said promissory notes, or either of them, it shall be lawful for the said grantee, or his successor in trust, to enter into and upon and take possession of the premises hereby granted, or any part thereof, and to collect and receive all rents, is-

sues and profits thereof; and, in his own name or otherwise, to file a bill or bills in any court having jurisdiction thereof against the said party of the first part, his heirs, executors, administrators and assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purpose herein specified, by said party of the second part, as such trustee or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the cost of such suit, all costs of advertising, sale and conveyance, including the reasonable fees and commissions of said party of the second part, or person who may be appointed to execute this trust, and one hundred dollars attorney's and solicitor's fees, and also all other expenses of this trust, including all moneys advanced for insurance, taxes and other liens or assessments, with interest thereon at six per cent. per annum, then to pay the principal of said notes, whether due and payable by the terms thereof or the option of the legal holder thereof, and interest due on said notes, up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, his legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires, to the purchaser or purchasers of said premises at such sale or sales, and it shall not be the duty of the purchaser to see to the application of the purchase money.

When the said notes and all expenses accruing under this trust deed shall be fully paid, the said grantee or his successor or legal representatives shall re-convey all of said premises remaining unsold to the said grantor or his heirs or assigns, upon receiving his reasonable charges therefor. In case of death, resignation, removal from Cook county, or other inability to act of said grantee Charles E. Stade then Frank Stade of said Cook county is hereby appointed and made successor in trust herein, with like power and authority, as is hereby vested in said grantee. It is agreed that said grantor shall pay all costs and attorney's fees incurred or paid by said grantee or the holder of said notes, in any suit in which either of them may be plaintiff or defendant, by reason of being a party to this trust deed, or a holder of said notes, and the same shall be a lien on said premises, and may be included in any decree ordering the sale of said premises and taken out of the proceeds of any sale thereof.

Witness, the hand and seal of the said grantor this seventeenth day of November, A. D. 1897.

(Signed) ABRAHAM L. DAY. [SEAL.]

[Endorsed:] Trust deed. Statutory form. Abraham L. Day to Charles E. Stade. State of Illinois, Cook county, ss. No. 2619060. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 24 day of Nov. A. D. 1897, at 2 o'clock p. m., and recorded in Book 5367 of Records on page 98. (Signed) Robert M. Simons, recorder. 12 m.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Arthur Luehr, a notary public in and for said county in the State aforesaid, do hereby certify that Abraham L. Day (a bachelor) personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

(Arthur Luehr, Notary Public, Cook County, Ill.)

Given under my hand and notarial seal, this 23rd day of November A. D. 1897.

(Signed) ARTHUR LUEHR,
Notary Public.

25 EXHIBIT "K."

Trust Deed—Statutory, under Law of 1879.

No. 790.

This indenture witnesseth, that the grantor Abraham L. Day, bachelor of the city of Chicago, in the county of Cook and State of Illinois, for and in consideration for the sum of eighteen hundred (1800) dollars, in hand paid, conveys and warrants to Charles E. Stade of the city of Chicago, county of Cook and State of Illinois, the following described real estate, to wit: Lots twenty-five (25) to forty-eight (48) both inclusive in block five (5) in B. L. Lee's addition to Fairview, said addition being a subdivision of the south half of the northeast quarter, of the south west quarter and the south east quarter of the south west quarter of section nine (9) township forty (40) north, range twelve (12) east of the third principal meridian, map whereof is recorded in the recorder's office of said Cook county, as Doc. No. 1,656,444 in Book 53 of Plats page 36. Said premises being, situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois, and all right to retain possession of said premises after any default in payment or a breach of any of the covenants or agreements herein contained in trust, nevertheless, for the following purposes:

Whereas, the said Abraham L. Day grantor herein is justly indebted upon his three (3) promissory notes bearing even date herewith, payable to the order of himself (and by him duly endorsed and delivered) for the principal sum of six hundred (600) dollars each, due and payable in 1, 2 and 3 years respectively, from the date thereof, with interest thereon at 6% per annum, payable annually until due.

Principal and interest are payable at the Northern Trust Company bank, Chicago, Illinois, and are to bear interest at 7% per annum after due, said notes being numbered 19, 20 and 21 respectively.

Now, if default be made in the payment of the said several promissory notes, or of any part thereof, or the interest thereon, or any part thereof, at the time and in the manner above specified for the payment thereof, or in case of waste, or non-payment of taxes or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then in such case the whole of said principal sum and interest, secured by the said several promissory notes, shall thereupon, at the option of the legal holder, or holders thereof, become immediately due and payable; and, on the application of the legal holder of said promissory notes, or either of them, it shall be lawful for the said grantee, or his successor in trust, to enter into and upon and take possession of the premises hereby granted, or any part thereof, and to collect and receive all rents, issues and profits thereof; and, in his own name or otherwise, to file a bill or bills in any court having jurisdiction thereof against the said party of the first part, his heirs, executors, administrators and assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purpose herein specified, by said party of the second part, as such trustee or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the cost of such suit, all costs of advertising, sale and conveyance, including the reasonable fees and commissions of said party of the second part, or person who may be appointed to execute this trust, and one hundred dollars attorney's and solicitor's fees, and also all other expenses of this trust, including all moneys advanced for insurance, taxes and other liens or assessments, with interest thereon at six per cent. per annum, then to pay the principal of said notes, whether due and payable by the terms thereof or the option of the legal holder thereof, and interest due on said notes, up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, — legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires, to the purchaser or purchasers of said premises at such sale or sales, and it shall not be the duty of the purchaser to see to the application of the purchase money.

When the said notes and all expenses accruing under this trust deed shall be fully paid, the said grantee or his successor or legal representatives shall re-convey all of said premises remaining unsold to the said grantor or his heirs or assigns, upon receiving his reasonable charges therefor. In case of death, resignation, removal from Cook county, or other inability to act of said grantee Charles E. Stade then Frank Stade of said Cook county is hereby appointed and made successor in trust herein, with like power and authority, as is hereby vested in said grantee. It is agreed that said grantor shall pay all costs and attorney's fees incurred or paid by said

grantee or the holder of said notes in any suit in which either of them may be plaintiff or defendant, by reason of being a party to this trust deed, or a holder of said note-, and the same shall be a lien on said premises, and may be included in any decree ordering the sale of said premises and taken out of the proceeds of any sale thereof.

Witness, the hand and seal of the said grantor this seventeenth day of November A. D. 1897.

(Signed) ABRAHAM L. DAY. [SEAL.]

[Endorsed:] Trust deed. Statutory form. Abraham L. Day to Charles E. Stade. State of Illinois, Cook county, *ss.* No. 2619056. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 24 day of Nov. A. D. 1897, at 2 o'clock p. m., and recorded in Book 5367 of Records on page 94. (Signed) Robert M. Simons recorder. 12 m.

STATE OF ILLINOIS, } *ss.*:
County of Cook, }

I, Arthur Luehr, a notary public, in and for said county, in the State aforesaid, do hereby certify that Abraham L. Day (a bachelor) personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

(Arthur Luehr, Notary Public, Cook County, Ill.)

Given under my hand and notarial seal, this 23rd day of November A. D. 1897.

(Signed) ARTHUR LUEHR,
Notary Public.

26 EXHIBIT "L."

Trust Deed—Statutory, under Law of 1879.

No. 790.

This indenture witnesseth, that the grantor Abraham L. Day, bachelor, of the city of Chicago, in the county of Cook and State of Illinois, for and in consideration for the sum of eighteen hundred (1800) dollars, in hand paid, conveys and warrants to Charles E. Stade of the city of Chicago, county of —— and State of *Cook*, the following described real estate, to wit: Lots one (1) to twenty-four (24) both inclusive in block five (5) in B. L. Lee's addition to Fairview, said addition being a subdivision of the south half of the north east quarter of the southwest quarter and the south east quar-

ter of the south west quarter of section nine (9) township forty (40) north, range twelve (12) east of the third principal meridian, map whereof is recorded in the recorder's office of said Cook county, as doc. No. 1656444 in Book 53 of Plats page 36, situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois, and all right to retain possession of said premises after any default in payment or a breach of any of the covenants or agreements herein contained in trust, nevertheless for the following purposes:

Whereas, the said Abraham L. Day grantor herein is justly indebted upon his three promissory notes, bearing even date herewith, payable to the order of himself, (and by him duly endorsed and delivered) for the principal sum of six hundred (600) dollars each, due and payable respectively in 1, 2 and 3 years from the date thereof, with interest thereon at six per cent. per annum, payable annually, until due, principal and interest are payable at the Northern Trust Company bank, Chicago, Illinois, and are to bear interest at the rate of 7 % per annum after due. Said notes being numbered 16, 17 and 18 respectively.

Now, if default be made in the payment of the said several promissory notes, or of any part thereof, or the interest thereon, or any part thereof, at the time and in the manner above specified for the payment thereof, or in case of waste, or non-payment of taxes or assessments on said premises, or of a breach of any of the covenants or agreements herein contained, then in such case the whole of said principal sum and interest, secured by the said several promissory notes, shall thereupon, at the option of the legal holder, or holders thereof, become immediately due and payable; and, on the application of the legal holder of said promissory notes, or either of them, it shall be lawful for the said grantee, or his successor in trust, to enter into and upon and take possession of the premises hereby granted, or any part thereof, and to collect and receive all rents, issues and profits thereof; and, in his own name or otherwise, to file a bill or bills in any court having jurisdiction thereof against the said party of the first part, his heirs, executors, administrators and assigns, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purpose herein specified, by said party of the second part, as such trustee or as special commissioner, or otherwise, under order of court, and out of the proceeds of any such sale to first pay the cost of such suit, all costs of advertising, sale and conveyance, including the reasonable fees and commissions of said party of the second part, or person who may be appointed to execute this trust, and one hundred dollars attorney's and solicitor's fees, and also all other expenses of this trust, including all moneys advanced for insurance, taxes and other liens or assessments, with interest thereon at six per cent. per annum, then to pay the principal of said notes, whether due and payable by the terms thereof or the option of the legal holder thereof, and interest

due on said notes, up to the time of such sale, rendering the overplus, if any, unto the said party of the first part, — legal representatives or assigns, on reasonable request, and to pay any rents that may be collected after such sale and before the time of redemption expires, to the purchaser or purchasers of said premises at such sale or sales, and it shall not be the duty of the purchaser to see to the application of the purchase money.

When the said notes and all expenses accruing under this trust deed shall be fully paid, the said grantee or his successor or legal representatives shall re-convey all of said premises remaining unsold to the said grantor or his heirs or assigns, upon receiving his reasonable charges therefor. In case of death, resignation, removal from Cook county, or other inability to act of said grantee Charles E. Stade then Frank Stade of said Cook county is hereby appointed and made successor in trust herein, with like power and authority, as is hereby vested in said grantee. It is agreed that said grantor shall pay all costs and attorney's fees incurred or paid by said grantee or the holder of said notes, in any suit in which either of them may be plaintiff or defendant, by reason of being a party to this trust deed, or a holder of said notes, and the same shall be a lien on said premises, and may be included in any decree ordering the sale of said premises and taken out of the proceeds of any sale thereof.

Witness, the hand and seal of the said grantor this seventeenth day of November, A. D. 1897.

(Signed) ABRAHAM L. DAY. [SEAL.]

[Endorsed:] Trust deed. Statutory form. Abraham L. Day to Charles E. Stade. State of Illinois, Cook county, ss. No. 2619055. This instrument was filed for record in the recorder's office of Cook county aforesaid, on the 24 day of Nov. A. D., 1897, at 1 o'clock p. m., and recorded in Book 5367 of Records on page —. Signed Robert M. Simons, recorder.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Arthur Luehr a notary public in and for said county, in the State aforesaid, do hereby certify that Abraham L. Day (a bachelor) personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

(Arthur Luehr, Notary Public, Cook County, Ill.)

Given under my hand and notarial seal, this 23rd day of November, A. D. 1897.

(Signed) ARTHUR LUEHR,
Notary Public.

27 (Endorsed:) Filed Nov. 20, 1903. Marshall E. Sampsell, clerk.

28 And on to-wit: the fourteenth day of January, 1904, came Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle as trustee and Arista B. Williams as successor in trust by their solicitors, Castle, Williams and Smith and filed in the clerk's office of said court in said entitled cause a certain motion to dismiss the amended bill, which said motion is in words and figures following to-wit:

Motion to Dismiss Amended Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

In the United States Circuit Court, Northern District, Northern Division.

CHARLOTTE E. HOADLEY, Complainant,
vs.
ABRAHAM L. DAY ET AL., Defendants. } Consolidated Causes No. 25192.

To the honorable, the judges of said court, in chancery sitting:

Now comes the defendants Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle as trustee and Arista B. Williams as successor in trust, and move the court to dismiss the amended bill of complaint herein for want of jurisdiction as apparent from the original bills of complaint filed in said consolidated suits, and from said amended bill, because it does not appear either from said original bills of complaint or from said amended bill of complaint, that the proper diversity of citizenship existed at the time of the commencement of the said suits, thereafter consolidated, between Friedrich Kolze, alleged
29 in said amended bill of complaint to have been the original owner of the nine promissory notes and the three trust deeds securing the same, in said amended bill of complaint described, or said Charles E. Stade, therein alleged to be his trusted agent in the premises, the assignors of said Charlotte E. Hoadley, complainant, and the defendants, or any of them, so as to confer jurisdiction upon said circuit court of the United States, or upon any Federal court.

CASTLE, WILLIAMS & SMITH,
Solicitors for said Defendants.

(Endorsed:) Filed Jan. 14, 1904. Marshall E. Sampsell, clerk.

30 And on to-wit: the 8th day of February, 1904, being one of the days of the regular December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of February 8, 1904, Overruling Motion to Dismiss Amended Bill.

CHARLOTTE E. HOADLEY
vs. } 25192.
ABRAHAM L. DAY ET AL.

Now come the parties by their solicitors and the court having considered and being now fully advised in the premises, overrules the motion of the defendants to dismiss.

And thereupon the defendants have leave to elect within fifteen days whether to stand by the motion to dismiss or plead to said amended bill.

31 And on to-wit: the 25th day of February, 1904, came Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams by their solicitors and file in the clerk's office of said court their certain plea to the amended bill in words and figures following to-wit:

Plea to Amended Bill.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss.:*

In the United States Circuit Court, Northern District, Northern Division.

CHARLOTTE E. HOADLEY, Complainant,
vs. } Consolidated Causes No. 25192.
ABRAHAM L. DAY ET AL., Defendants.

The plea of Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee, and Arista B. Williams, as successor in trust, defendants, to the amended bill of complaint.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's amended bill of complaint mentioned and contained, to be true, in such sort, manner and form as the same are therein set forth and alleged, for plea to said amended bill, say:

32 That this court ought not to take further cognizance of or sustain the said amended bill of complaint, because they say, that they, the said defendants, and the said defendant Abraham L. Day, at the time of the filing of the said bills of complaint in said suits thereafter consolidated, were, and still are, all each and every one citizens of the State of Illinois; that said suit is brought by said plaintiff as assignee, from one William P. Smith, who had theretofore obtained the notes and trust deeds hereinafter described, by assignment from said defendant Charles E. Stade, to recover the contents of certain choses in action, to-wit: nine (9) certain promissory notes dated November 17th A. D. 1897, payable to the order of himself, and by him duly endorsed, signed by said Abraham L. Day, secured by three certain trust deeds of even date therewith from said Abraham L. Day to Charles E. Stade as trustee, conveying certain premises in the county of Cook and State of Illinois; that said plaintiff did not advance or cause to be advanced a large sum of money upon the note of said Charles E. Stade alleged in said amended bill to have been the trusted agent of one Friedrich Kolze, secured to be paid by the pledge of the said nine promissory notes and said three trust deeds as collateral security therefor, as in said amended bill alleged; that on the contrary the said nine promissory notes and three trust deeds signed by the said Abraham L. Day, were deposited by the said Charles E. Stade with said William P. Smith, or some person or persons acting for him, to secure the payment of a certain promissory note for one thousand ($1,000.00) dollars, signed by him, said Charles E. Stade, payable to the order of said William P. Smith, and also to secure said William P. Smith for the faithful performance by said Stade of a certain contract of employment entered into between said Stade and said Smith on or about the date of said note for one thousand ($1,000.00)
33 dollars; that thereafter, on or about April 21, 1899, said Charles E. Stade having failed and refused to pay said note for one thousand ($1,000.00) dollars when the same became due by its terms, or to perform said contract on his part, the said William P. Smith caused to be sold in accordance with the terms of the said collateral note for one thousand ($1,000.00) dollars signed by said Stade, the said collateral, towit: the nine promissory notes and the three trust deeds signed by said Abraham L. Day, the contents of which are herein sought to be recovered; that said nine notes and three trust deeds signed by said Abraham L. Day were thereupon bid in and became the property of said plaintiff Charlotte E. Hoadley; that said Charles E. Stade and said William P. Smith, the successive assignors of the said plaintiff as aforesaid, were each and both, at the time of the filing of said bills, and still are, citizens of the State of Illinois, the same State of which said maker of said notes and trust deed-, Abraham L. Day, was at the time of the filing of said bills, and still is a resident, and were not at the time of filing said bills, and still are not, citizens of the State of Massachusetts; that suit to recover the contents of said choses in action,

to-wit: the said nine promissory notes and three trust deeds, signed by said Abraham L. Day, could not have been prosecuted by said Charles E. Stade or said William P. Smith, or either of them, in said circuit court of the United States, if no assignment or transfer of said notes and trust deeds had been made, all of which matters and things these defendants do aver to be true and are ready to verify.

Wherefore they plead the same to said amended bill of complaint, and pray that judgment of this honorable court, whether they should be compelled to make any further answer to said amended bill.

CASTLE, WILLIAMS & SMITH,
Solicitors for Defendants.

34 I hereby certify that in my opinion the foregoing plea of Fred H. Kolze, administrator, etc., Lina Kolze, Louisa Kolze, Percy V. Castle as trustee and Arista B. Williams as successor in trust, defendants, to the amended bill of complaint of Charlotte E. Hoadley, complainant, is well founded in law, and proper to — filed in the above cause.

HOWARD P. CASTLE,
Solicitor for said Defendants.

UNITED STATES OF AMERICA,
Northern District of Illinois, } ss:

Percy V. Castle, one of said defendants, on oath states that he has heard read the foregoing plea to the amended bill of complaint of Charlotte E. Hoadley in said suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

PERCY V. CASTLE.

Subscribed and sworn to before me, this 22nd day of February, A. D. 1904.

[SEAL.] ELDON M. VOTAW,
Notary Public.

(Endorsed:) Filed Feb., 25, 1904, Marshall E. Sampsell, clerk.

35 And on to-wit: the 5th day of April, 1904, being one of the days of the regular December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of April 5, 1904.

CHARLOTTE E. HOADLEY
vs.
ABRAHAM L. DAY. } 25192.

Now come the parties by their solicitors and now comes on to be heard the sufficiency of the plea to the amended bill of complaint herein, and the court having heard the same and being now fully advised in the premises, finds that said plea is insufficient, and the defendants are ruled to answer the said amended bill within ten days.

36 And on to-wit: the twenty-fifth day of May, 1904, being one of the days of the regular December term of said court, 1903, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Decree of May 25, 1904.

CHARLOTTE E. HOADLEY
vs.
ABRAHAM L. DAY, CHARLES E. STADE, Trustee; FRANK Stade, Successor in Trust; Fred H. Kolze, as Administrator of the Estate of Friedrich Kolze, Deceased; Lina Kolze, a Widow; Louisa Kolze, a Spinster; Percy V. Castle, as Trustee; Arista B. Williams, as Successor in Trust. } 25192.

And now this day comes the complainant, Charlotte E. Hoadley, by Herman W. Stillman, her solicitor, the said Herman W. Stillman, being now substituted as the solicitor for said complainant in place of Stillman and Martyn, and by Edwin M. Ashcraft associate counsel for said complainant, and the defendants Fred H. Kolze, as administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, a widow, Louisa Kolze, a spinster, Percy V. Castle, as trustee, Arista B. Williams, successor in trust, all by Castle, Williams & Smith, their solicitors.

37 And upon motion of said complainant, by her said solicitor, it is hereby ordered that the order heretofore entered in the above entitled cause on, to wit: November 20, 1903, and whereby leave was given to the said complainant, to file the amended bill herein instanter, be and the same is hereby modified and amended *nunc pro tunc* as of said date, so that the same shall read as follows: On motion of the complainant's solicitor, and upon notice to the defendants, leave is hereby given to file the amended bill herein instanter, the defendants to plead to the same within ten days, all

without prejudice to the reference heretofore made in said cause to William M. Booth, Esq., master in chancery of this court, to take proofs and report the same together with his conclusions, and without prejudice to the proceedings had and taken before said master, and to the said master's report, filed herein, and to the exceptions thereto.

And it is now further ordered, adjudged and decreed by the court that the filing of the said amended bill of complaint herein on, to wit: November 20th, 1903, shall in no wise affect the said reference and the proceedings thereunder, and the said master's report and the exceptions thereto, heretofore filed in this cause.

And upon motion of said complainant this cause is now dismissed as to the defendant, Abraham L. Day.

And this said cause coming on now to be heard upon the said amended bill of complaint herein, heretofore taken as confessed, by and against the defendants, Charles E. Stade, as trustee, Frank Stade, as successor in trust, the defaults of said defendants for greater certainty, being now again entered herein of record in said cause, and upon the said amended bill, also taken as confessed by and against
38 the defendants Fred H. Kolze, as administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams, as successor in trust, for want of answer pursuant to the rule of court, entered herein on, to-wit: April 5th, 1904, upon the overruling of the plea of said defendants to the said amended bill of complaint herein, which defaults of the said defendants are now hereby entered of record in the said cause.

And this cause also coming on to be heard upon the report of William M. Booth, Esq., master in chancery of this court, which report bears date and was filed herein on, to-wit: May 25th, A. D. 1903, and was made in pursuance of an order of this court, heretofore made in this cause, referring it to the said master to take proofs in said cause and to compute the amount due to the complainant upon the notes and the trust deeds and the covenants therein contained, mentioned and set forth in the original bill of complaint filed herein, and the bills of complaint in the two suits of Charlotte E. Hoadley *vs.* Abraham L. Day, *et al.*, Gen. No. 25,193 and 25,194, respectively, all of which notes and trust deeds are mentioned and set forth in the amended bill of complaint, filed in this cause, and which report was filed herein on, to-wit: May 25th, A. D. 1903, as aforesaid;

And this cause having been heretofore brought on to be heard, upon said master's report and the exceptions thereto, and the court having heard the arguments of counsel for the respective parties herein, and having fully considered the said master's report, and the exceptions thereto, and the court now being fully advised in the premises, doth order, adjudge and decree that the exceptions to said report be and the same are hereby overruled and said report, and the things therein contained, do stand ratified and confirmed;

39 And the court being fully advised in the premises, further finds that it has jurisdiction of the parties to this cause and of the subject matter thereof; that the material allegations in the amended bill of complaint in said cause contained, are true as therein stated; that the notes and trust deeds mentioned and described in the said amended bill of complaint were duly executed, and the said three trust deeds were duly acknowledged and recorded as in said amended bill of complaint set forth,

The court further finds that subsequently to the execution of the three sets of notes and the three trust deeds in said amended bill of complaint described, the said Abraham L. Day, a bachelor, by deed dated and acknowledged on, to-wit: the 23rd day of November, A. D. 1897, and delivered and recorded on, to-wit: the 30th day of June, A. D. 1898, conveyed the premises embraced in said three trust deeds with other property, to Friedrich Kolze, who was a defendant in this cause, and has departed this life *pendente lite*, the said Friedrich Kolze being the same party from whom the said Abraham L. Day had acquired title to said premises at or shortly prior to the execution of said trust deeds; and the court finds that thereafter, by release deed, dated on, to-wit: October 27th, A. D. 1898, and recorded on, to-wit: October 29th, A. D. 1898, in the recorder's office of Cook county, aforesaid, as document 2,747,648 in Book 6363 of Records at page 364, the said Charles E. Stade, trustee, did fraudulently and wrongfully release the three trust deeds in said amended bill of complaint described, together with other trust deeds, covering other property, unto the said Friedrich Kolze, the said release deed reciting that the same was made for and in consideration of one dollar ($1.00) and for other good and valuable considerations, the receipt whereof was thereby confessed and further reciting that the
40 notes secured thereby had been cancelled; and the court finds in this behalf that the indebtedness secured by such three trust deeds, and evidenced by the said notes, so owned by the complainant herein, as aforesaid, had not and has not been paid in whole or in part, and that said notes were then and now are owned by the said complainant, who is a citizen of the State of Massachusetts, and said notes had not at the date of said release and have not been cancelled; and the court finds that said notes are the genuine notes secured by said three trust deeds respectively, and the release executed by the said Charles E. Stade, trustee, was and is fraudulent as to the said complainant, and it is hereby ordered, adjudged and decreed that the said release deed was and is void and of no effect as against said complainant, as the owner and holder of said three sets of notes secured by said three trust deeds, as aforesaid, and the said release deed is hereby in all respects set aside as to said three sets of notes and three trust deeds in the amended bill of complaint described and the said three trust deeds are hereby declared to be valid first liens upon the premises in said three trust deeds respectively described, according to the terms and tenor

thereof, to all intents and purposes as though such release deed had not been executed;

The court further finds that subsequently to the execution of the three sets of notes and the three trust deeds in said amended bill of complaint described, and before the maturity of said notes, at or shortly after the delivery of the said fraudulent release deed by the said Charles E. Stade, trustee, the said Friedrich Kolze, now deceased, and Lina Kolze, his wife, conveyed the said premises described in said three trust deeds, and other property, to the defendant, Louisa Kolze, who is a daughter of said Friedrich Kolze and Lina Kolze, at an expressed consideration of twelve thousand dollars ($12,000); and that the defendant, Louisa Kolze is in
41 possession of said premises, and that the defendant Lina Kolze, is occupying said premises under a verbal lease thereof with the said Louisa Kolze, and that there was no other person in possession of said premises or any part thereof when the bill herein was filed and process served; and the court finds that under all the circumstances shown by the evidence, and returned by said master as a part of his report, the rights of said Louisa Kolze under said deed, and of Lina Kolze, her tenant, as aforesaid, are in all respects subject and subsequent to the rights of the said complainant as the owner of said three sets of notes secured by said three trust deeds, as aforesaid;

The court further finds that at the date of said execution of said deed from the said Friedrich Kolze and Lina Kolze, his wife, to Louisa Kolze, the said Louisa Kolze executed her certain promissory note for the sum of ten thousand dollars ($10,000) dated October 28th, A. D. 1898, payable five years after said date, to the order of herself and by her endorsed, also interest coupon notes attached thereto, together with a certain deed of trust from the said Louisa Kolze, to the defendant Percy V. Castle, as trustee, the defendant, Arista B. Williams, being named therein as successor in trust, said trust deed being recorded in Book 5374 of Records at page 94, as document number 2,747,680, conveying the premises described in said trust deeds so owned by the complainant herein, and other property, said trust deed being recited to be for part purchase money of said premises; and the court finds that the defendant, Fred H. Kolze, who is the duly appointed and acting administrator of the estate of Friedrich Kolze, deceased, is now the legal owner and holder of said notes and of said trust deed last described, as such administrator, and the court finds that the rights of the said owner of said notes, last above mentioned, and the lien of said trust deed securing the same, are in all respects subject and subsequent
42 to the rights of the complainant and the lien of said three trust deeds so owned by the said complainant upon the premises respectively described therein as aforesaid.

The court further finds that there is now due and owing to the said complainant, Charlotte E. Hoadley, upon the three notes for six hundred dollars ($600) each, numbered thirty one (31) thirty-two

(32) and thirty three (33) respectively, mentioned and described in the amended bill of complaint, and secured to be paid by the trust deed covering lots twenty five (25) to forty eight (48) both inclusive, in block seven (7) in B. L. Lee's addition to Fairview, said addition being a sub-division of the south half of the north east quarter of the south west quarter and the south east quarter of the south west quarter of section nine (9) township forty (40) north, range twelve (12) east of the third principal mer-dian in Cook county, Illinois, the sum of twenty five hundred and twenty three dollars ($2523.00) and the court further finds that there is due to the complainant as and for her solicitors' fees incurred in this proceeding, the sum of three hundred dollars, which sum the court finds is a usual, reasonable and customary fee for the services of complainant's solicitors herein, one third of which sum, or one hundred dollars is properly chargeable under the trust deed last above mentioned against the premises therein described; and the court further finds that there is further due and chargeable under the trust deed and against the premises last above described, one third of the fees and disbursements of the said master in chancery which the court hereby taxes at the sum of three hundred and eighty dollars ($380.00) one third of which sum is the sum of one hundred and twenty six and 66/100 dollars ($126.66) and together also with one third of the taxed costs in this court.

43 The court further finds that there is now due and owing to said complainant, Charlotte E. Hoadley, upon the three notes numbered nineteen (19) twenty (20) and twenty one (21) respectively, for six hundred dollars ($600) each, mentioned and described in the said amended bill of complaint in this cause, and secured to be paid by the trust deed covering lots twenty five (25) to forty eight (48) both inclusive, in block five (5) in B. L. Lee's addition to Fairview, said addition being a sub-division of the south half of the northeast quarter of the south west quarter, and the south east quarter of the south west quarter of section nine (9) township forty (40) north, range twelve (12) east of the third principal meridian in Cook county, Illinois, the sum of twenty five hundred and twenty three dollars ($2523.00); and the court further finds as aforesaid, that there is due to the complainant as and for her solicitors' fees incurred in this proceeding, the sum of three hundred dollars ($300) which sum the court finds is a usual, reasonable and customary fee for the services of complainant's solicitors herein, one third of which sum, or one hundred dollars, is properly chargeable under the trust deed last above mentioned against the premises therein described; and the court further finds that there is further due and chargeable under the trust deed and against the premises last above described, one third of the fees and disbursements of the said master in chancery taxed as aforesaid, at the sum of three hundred and eighty dollars ($380) one third of which sum is the sum of one hundred and twenty six and 66/100 dollars ($126.66) and together also with one third the taxed costs in this suit.

The court further finds that there is now due and owing to said complainant, Charlotte E. Hoadley, upon the three notes numbered sixteen (16) seventeen (17) and eighteen (18) respectively, for six hundred dollars each, mentioned and described in the amended bill of complaint, and secured to be paid by the trust deed cover-
44 ing lots one (1) to twenty four (24) both inclusive, in block five, (5) in B. L. Lee's addition to Fairview, said addition being subdivision of the south half of the north east quarter of the south west quarter, and the south east quarter of the south west quarter of section nine (9) township forty (40) north, range twelve (12) east of the third principal meridian in Cook county, Illinois, the sum of twenty five hundred and twenty three ($2523.00) dollars and the court further finds, as aforesaid, that there is due to the complainant as and for her solicitors' fees incurred in this proceeding the sum of three hundred dollars ($300) which sum the court finds is a usual, reasonable and customary fee for the services of complainant's solicitors herein, one third of which sum, or one hundred dollars ($100) is properly chargeable under the trust deed above mentioned against the premises therein described; and the court further finds that there is further due and chargeable under the trust deed and against the premises last aforesaid, one third of the fees and disbursements of the said master in chancery taxes as aforesaid, at the sum of three hundred and eighty dollars ($380) one third of which sum is the sum of one hundred and twenty six and 66/100 dollars ($126.66) and together also with one third of the taxed costs in this suit.

The court further finds that the consideration for which the said three sets of notes were acquired by the complainant with interest thereon at six per cent. per annum to this date, amounts to the sum of twenty eight hundred and fifty dollars, one-third of which amount, or the sum of nine hundred and fifty dollars, is the actual consideration for each of said sets of notes hereinbefore mentioned; and said complainant in open court voluntarily remits that part of
45 several sums due as aforesaid under each of said notes and trust deeds, over and above the said sum of nine hundred and fifty (950) dollars, being the consideration for which each of said sets of notes as aforesaid, were acquired, as aforesaid, together with the solicitors' fees and other costs, as hereinbefore recited, and the court finds that after such remitting of part of the sums due the said complainant as aforesaid, there is now due and owing to the said complainant, the sum of nine hundred and fifty dollars ($950) together with solicitors' fees and costs, as aforesaid, under each of said three sets of notes and three trust deeds hereinbefore described.

It is iurther adjudged and decreed that unless the defendants or some of them, within five days from the entry of this decree pay, or cause to be paid to the said complainant Charlotte E. Hoadley, or to her solicitors of record, the said three sums of nine hundred and fifty dollars ($950) each, due the complainant, as aforesaid, with interest thereon at the rate of 5% per annum from the entry of this

decree to the date of said payment, and also pay said sums so found due to said complainant as and for her solicitors' fees incurred in this proceeding, and pay to the officers of this court the costs of this suit, one-third of which costs are hereby taxed against each of said three parcels of land embraced in said three trust deeds in said amended bill of complaint described respectively; that the premises in said trust deeds and in said amended bill, and hereinbefore described, as to which default in payment shall be made, or so much thereof as may be necessary to pay the amounts so found to be due to the complainant, with interest thereon, and costs and solicitors' fees aforesaid, chargeable against said several tracts as hereinbefore found as to which said default shall be made, and which may be sold separately, without material injury to the parties in interest, respectively be sold at public auction to the highest and best bidder for cash, by William M. Booth, Esq., master in chancery, at the
46 judicial *sla*-srooms of the Chicago real estate board, number fifty seven (57) Dearborn street, in the city of Chicago, county of Cook and State aforesaid, and it is ordered and decreed that payment may be made of the amounts so found to be due, and secured by each, any or all of said three trust deeds with costs and fees aforesaid, within the time aforesaid, and that no sale shall be made of the premises upon which such payment shall be made within the time as aforesaid and that said master give public notice of the time, place and terms of the sales of such of said three tracts of land as to which default shall be made, in payment of the amount heretofore decreed against the same, by publishing an advertisement thereof once a week for four successive weeks in a newspaper, printed, regularly issued and having a general circulation in said county of Cook and State of Illinois, the first publication of such notice being not less than twenty eight days previous to the time of such sale; and that the complainant, or any of the parties to this suit may become the purchaser or purchasers at said sales; that at such sale the said several tracts of land described in said three trust deeds hereinbefore referred to respectively, or such parts thereof as shall be sufficient to realize the several amounts so found due to the said complainant, chargeable against said several tracts, as aforesaid, shall be offered separately for the said debt so chargeable against the same respectively, so that the said sales so made by the said master shall in all respects be made separately, to all intents and purposes as though each of said trust deeds were separately foreclosed and three separate decrees were entered by this court therein; that upon such sales being made, said master shall execute and deliver to any purchaser or purchasers a certificate or certificates of sale evidencing such several purchases, describing the premises purchased, the amount paid therefor, or if purchased by the complainant, the amount of her bid, in each instance, and the time when said purchaser or pur-
47 chasers will be entitled to deeds for said premises, if the same shall not be redeemed according to law, and that within ten days from such sale the said master file duplicates of such certifi-

cates in the office of the recorder of deeds of said Cook county, all in pursuance of the law of the State of Illinois, in such cases made and provided.

It is further ordered that if the said premises, or any parcel thereof, shall at such sale be struck off and sold by the master to the complainant in this cause, the complainant shall be required to pay to the master only so much of the complainant's bid as shall be sufficient (taken together with other moneys paid to the master at such sale, on bids for parcels by other persons, if any there be), to satisfy the expenses of the sale, and the master's fees, disbursements and expenses, and the costs of this suit, and also any excess of the remainder of the amount of said bid, after such payment, over the amount due the complainant under this decree for indebtedness secured by said trust deeds as aforesaid.

Is is further ordered that said master make report to this court of such sale and of his acts and doings hereunder for approval and confirmation, and for further direction herein; and that he retain from the moneys received by him on any sale under this decree, the amount of his fees, disbursements and commissions thereon, and bring the residue of such moneys, if any, into court to abide the further order of the court, and that he take the receipt of the clerk of this court therefor, and file the same with said report; and if the price for which said several parcels shall be so sold shall be insufficient to satisfy the amount so found and adjudged to be due to the complainant chargeable against the same, as aforesaid, with interest thereon, and the costs of suit and expenses of sale as aforesaid, that the said master specify the amount of such deficiency or deficiencies in his said report of sale.

48 And it is further ordered that the clerk of this court hold such moneys so to be paid him by said master subject to the further order and direction of this court in this cause.

It is further ordered that if any sale made by said master under this decree shall be confirmed by this court, and if the land so sold shall not be redeemed according to the laws of the State of Illinois, the said master in chancery of this court shall, after the expiration of the time allowed by law for such redemption, execute and deliver to the legal holder of any certificate of sale issued under this decree a deed of conveyance of the land in such certificate described (which shall not have been so redeemed) without further order.

And it is further ordered, adjudged and decreed that the defendants in this cause, and all persons claiming by, through or under them, or either of them, since the filing of the original bill of complaint in this cause, be forever barred and foreclosed from all equity of redemption and claim of, in and to said above described land and premises, and any part and parcel thereof, which shall be sold, as aforesaid, under this decree, and which shall not be redeemed according to law.

And it is further ordered, adjudged and decreed that upon the execution and delivery of the deed or deeds of conveyance as afore-

said, the grantee or grantees, his or their heirs or assigns be let into possession of the portion of said mortgaged premises so conveyed to him or them, and that any of the parties in this cause who may be in possession of said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them, or either of them, on the production of said master's deed of conveyance and of a certified copy of the order of this court confirming the report of said sale, surrender possession thereof to such grantee or grantees, his or their heirs or assigns.

49 And on the same day to-wit: the 25th day of May, 1904, came Fred H. Kolz-, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor by their solicitors and filed in the clerk's office of said court in said entitled cause certain assignment of errors and petition for appeal in words and figures following to-wit:

Assignment of Errors and Petition for Appeal.

UNITED STATES OF AMERICA, Northern District of Illinois, } ss:

In the United States Circuit Court, Northern District of Illinois, Northern Division.

CHARLOTTE E. HOADLEY, Complainant, vs. ABRAHAM L. DAY ET AL., Defendants. } Consolidated Causes No. 25192.

To the honorable the judges of said court, in chancery sitting:

Your petitioners, Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams, as successor in trust, defendants in said suit, respectfully represent that there is manifest error committed to the injury of the petitioners by the final decree entered in said cause on the 25th day of May, A. D. 1904, and by the interlocutory orders theretofore entered by said court in said cause, denying the motion in writing of your petitioners filed January 13th, 1904, to dismiss the amended bill of complaint herein, for want of jurisdiction because it did not appear that the proper diversity of citizenship existed at the time of the commencement of the said suits thereafter consolidated, between Friedrich

50 Kolze or Charles E. Stade, alleged to be his agent, the assignors of said Charlotte E. Hoadley complainant, and the defendants, or any of them, so as to confer jurisdiction upon said circuit court of the United States or upon any Federal court, and also overruling the plea of your petitioners filed herein February 25, 1904, said plea being to the jurisdiction of said court for the

reason above stated, in and by which said interlocutory orders and final decree this court assumed and asserted jurisdiction of the subject matter of said suit.

Wherefore your petitioners, considering themselves aggrieved, pray an order granting an appeal from said final decree and interlocutory orders taking and exercising jurisdiction as aforesaid to the Supreme Court of the United States, as authorized by section 5 of the act of Congress of the United States, approved March 3, 1891, upon the filing by your petitioners of their bond in a penal sum to be fixed by said court, to be hereafter approved by this court.

And your petitioners will ever pray, etc.

FRED H. KOLZE,
Administrator of the Estate of
Friedrich Kolze, Deceased,
LINA KOLZE,
LOUISA KOLZE,
PERCY V. CASTLE,
As Trustee,
ARISTA B. WILLIAMS,
As Successor in Trust,
By CASTLE, WILLIAMS &
SMITH, Their Solicitors.

CASTLE, WILLIAMS & SMITH,
Solicitors for Petitioners.

(Endorsed:) Filed May 25, 1904, Marshall E. Sampsell, clerk.

51 And on the same day to-wit: the 25th day of May, 1904, in the December term of said court, 1903, (the parties being present and in open court) there appears in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, the following entry to-wit:

Order of May 25, 1904, Allowing Appeal upon Filing Bond, etc.

CHARLOTTE E. HOADLEY
vs.
ABRAHAM L. DAY ET AL. } 25192.

Upon consideration of the petition for appeal to the Supreme Court of the United States, filed herein by Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor in trust, defendants to said suit, it is ordered that said appeal be granted, bond therefor in the penalty of one thousand dollars to be executed and filed in and approved by this court within 60 days from this date.

This appeal is granted solely upon the question of jurisdiction and unless counsel shall agree by stipulation filed with the clerk in respect to the portions of the record to be transcribed and filed in said United States Supreme Court under said appeal as prayed and granted, the appellants have leave to present the record to this court within the time above specified, for the filing of said appeal bond, for the determination of what portion of the record shall be certified to said Supreme Court under said appeal.

51½ And on to-wit: the 21st day of July, in the July term of said court, 1904, in the record of proceedings thereof in said entitled cause before the Hon. Christian C. Kohlsaat, district judge, appears the following entry to-wit:

Order of July 21, 1904, Extending Time to File Appeal Bond.

CHARLOTTE E. HOADLEY
vs. } 25192.
ABRAHAM L. DAY.

On motion of the solicitors for the defendants, Fred H. Kolze, administrator, etc., Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams, successor in trust, it is ordered that the time for filing the appeal bond in said cause be extended ten days or until August 3rd, 1904, without prejudice to the right of Charlotte E. Hoadley, the complainant to object to the approval of the appeal bond when presented, on the ground that the record has not been filed and the appeal perfected in accordance with the rules and practice on appeals.

52 And on to-wit: the second day of August, 1904, there was filed in the clerk's office of said court in said entitled cause a certain stipulation as to parts of record to be certified on appeal, said stipulation is in words and figures following to-wit:

Stipulation as to Parts of Record to be Certified on Appeal.

UNITED STATES OF AMERICA, Northern District of Illinois, } ss:

In the United States Circuit Court, Northern District, Northern Division.

CHARLOTTE E. HOADLEY, Complainant, vs. ABRAHAM L. DAY ET AL., Defendants. } No. 25192.

It is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors, that the record on appeal in said cause, to be transcribed and filed in and certified to the Supreme Court of the United States, under the appeal in said cause to said Supreme Court of the United States, as heretofore prayed and granted solely upon the question of jurisdiction, and referred to in and by the order of said court granting said appeal, shall be and consist of the following matters shown of record in said cause, to-wit:

The amended bill of complaint in said cause.

The motion of the defendants Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle as trustee and Arista B. Williams as successor in
53 trust, to have dismissed for want of jurisdiction the said amended bill of complaint.

The order of said United States circuit court overruling said motion to dismiss said amended bill for want of jurisdiction.

The plea of said defendants above named to said amended bill of complaint.

The order of said United States circuit court overruling the said plea and requiring said defendants to answer said amended bill of complaint.

The final decree in said cause entered May 25th, 1904.

The petition of said defendants above named for appeal to the Supreme Court of the United States, upon the question of jurisdiction solely, and the assignment of errors.

The order of said United States circuit court allowing said appeal.

This stipulation of the parties to said suit as to the portions of the record in said cause to be certified on said appeal.

The appeal bond filed in said court, and the order of said court approving the same.

It is further stipulated and agreed that the original bill of complaint in said cause contained no other or different jurisdictional facts or matters than are contained in the said amended bill of complaint.

And it is further stipulated, that said portion of the record in said cause shall be certified by the clerk of said United States circuit

court, as and for the record provided for in said order of court granting said appeal, and that said portions of said record when so certified as aforesaid, shall be transmitted to the said Su-
54 preme Court of the United States, and that no objection or exception shall be had thereto on such appeal by reason of any clerical mistakes or errors arising from any accidental slip or omission in said transcript of record, so certified, to said Supreme Court of the United States.

HERMAN W. STILLMAN,
Solicitor for Complainant.
CASTLE, WILLIAMS & SMITH,
Solicitors for Defendants Fred. H. Kolze, Administrator, etc.; Lina Kolze, Louisa Kolze, Percy V. Castle, Trustee, and Arista B. Williams, Successor in Trust.

(Endorsed:) Filed Aug. 2, 1904. Marshall E. Sampsell, clerk.

55 And on to-wit: the second day of August, 1904, came Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor in trust as principals and William H. Craig as surety and filed in the clerk's office of said court in said entitled cause a certain bond on appeal in words and figures following to-wit:

56 Know all men by these presents, that we Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle as trustee and Arista B. Williams, as successor in trust as principals and William H. Craig, as surety, are held and firmly bound unto Charlotte E. Hoadley, in the full and just sum of one thousand dollars, to be paid to the said Charlotte E. Hoadley, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23rd day of July in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a term of the United States circuit court in chancery for the northern district of Illinois in a suit depending in said court, between Charlotte E. Hoadley, complainant and Abraham L. Day, Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased and others. A decree was rendered against the said defendants and the said Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams, as successor in trust, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Charlotte E. Hoadley, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said Fred H. Kolz, administrator etc., Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor in trust shall prosecute their appeal to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

HOWARD P. CASTLE.
FRED H. KOLZE, [SEAL.]
Administrator of Estate of Friedrich Kolze, Deceased.
LINA KOLZE. [SEAL.]
LOUISA KOLZE. [SEAL.]
PERCY V. CASTLE, [SEAL.]
As Trustee.
ARISTA B. WILLIAMS, [SEAL.]
As Successor in Trust.
WILLIAM H. CRAIG. [SEAL.]

Bond O. K.
H. S. STODDARD, Dep. Clerk.

Approved Aug. 2, 1904.
KOHLSAAT, J.

(Endorsed:) Filed Aug 2, 1904. Marshall E. Sampsell, clerk.

57 And on to-wit: the 2nd day of August, being one of the days of the regular July term of said court, 1904, in the record of proceedings thereof before the Hon. Peter S. Grosscup, circuit judge appears by the direction of the Hon. Christian C. Kohlsaat, district judge, the following entry to-wit:

Order of August 2, 1904, Approving Appeal Bond.

CHARLOTTE E. HOADLEY
vs.
ABRAHAM L. DAY, FRED H. KOLZE, Administrator, ET AL. } 25192.

On motion of the defendants, Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor in trust. It is ordered that the bond of said defendants for appeal to the Supreme Court of the United States on the question of jurisdiction only, under the order granting said appeal, heretofore entered, this day filed, be and the same is hereby approved.

And by agreement of the parties hereto, by their respective solicitors, it is ordered that said appeal shall not act as a supersedeas, without prejudice, however, to the rights of said defendants under said appeal.

58 Præcipe for Record.

UNITED STATES OF AMERICA, Northern District of Illinois, } ss:

In the United States Circuit Court, Northern District, Northern Division.

CHARLOTTE E. HOADLEY, Complainant, vs. ABRAHAM L. DAY ET AL., Defendants. } No. 25192.

The clerk of said United States circuit court, is hereby directed to prepare a transcript of the following portions of the matters and things of record in said cause for appeal to the United States Supreme Court on the question of jurisdiction only, under the order heretofore entered, to-wit:

The amended bill of complaint.

The motion of defendants Fred H. Kolze, *et al.* to have said amended bill of complaint dismissed.

The order of said court overruling said motion.

The plea of the defendants Fred H. Kolze *et al.* to said amended bill of complaint.

The order of court overruling said plea and requiring defendants to answer.

The final decree in said cause entered May 25, 1904.

The petition of the defendants Fred H. Kolze, *et al.* for appeal to the Supreme Court of the United States upon the question of jurisdiction solely and the assignment of errors.

The order of said court allowing said appeal.

59 The stipulation of the parties to said suit as to the portions of the record to be certified on said appeal.

The appeal bond filed in said court and the order of said court approving the same.

CASTLE, WILLIAMS & SMITH,
Solicitors for Defendants Fred H. Kolze, Administrator, etc.; Lina Kolze, Louisa Kolze, Percy V. Castle, Trustee, and Arista B. Williams, Successor in Trust.

(Endorsed:) Filed Aug. 2, 1904. Marshall E. Sampsell, clerk.

60 NORTHERN DISTRICT OF ILLINOIS, Northern Division, } ss:

I, Marshall E. Sampsell, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court and made in accordance with stipulation and præcipe filed in the cause entitled Charlotte E. Hoadley, complainant *vs.* Abraham L. Day, Charles E. Stade, trustee, Frank

Stade, successor in trust, Fred H. Kolze, as administrator of the estate of Friedrich Kolze, deceased, Lina Kolze, a widow, Louisa Kolze, a spinster, Percy V. Castle, as trustee, Arista B. Williams, as successor in trust, defendants, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district this 16th day of August, 1904.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, Clerk.

61 UNITED STATES OF AMERICA, *ss:*

To Charlotte E. Hoadley, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal entered and filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Fred H. Kolze, administrator of the estate of Friedrich Kolze, deceased; Lina Kolze, Louisa Kolze, Percy V. Castle, as trustee and Arista B. Williams as successor in trust, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said order mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Christian C. Kohlsaat, district judge, this second day of August, in the year of our Lord one thousand nine hundred and four.

KOHLSAAT, Judge.

62 [Endorsed:] No. 25192. Supreme Court of the United States. Hoadley *vs.* Kolze *et al.* Citation to the Supreme Court of the United States. Circuit court of the United States, northern district of Illinois, northern division. Filed Aug. 9, 1904. Marshall E. Sampsell, clerk.

Service of the foregoing citation accepted and copy thereof received this 9th day of August A. D. 1904, without prejudice to the right to object that said citation was not issued in apt time after the appeal in said cause.

CHARLOTTE E. HOADLEY,
By HERMAN W. STILLMAN,
Her Solicitor.

Endorsed on cover: File No. 19,463. N. Illinois C. C. U. S. Term No. 91. Fred H. Kolze, administrator of the estate of Friederich Kolze, deceased, Lina Kolze, Louisa Kolze, *et al.*, appellants, *vs.* Charlotte E. Hoadley. Filed September 2d, 1904. File No. 19,463.